

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

BEAUMONT DIVISION

ROBERT MITCHELL ALEXANDER

§

VS.

§

CIVIL ACTION NO. 1:18cv21

CHRISTOPHER G. CARTER, ET AL.

§

MEMORANDUM ORDER OVERRULING OBJECTIONS AND ADOPTING
THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Plaintiff Robert Mitchell Alexander, an inmate at the Stiles Unit of the Texas Department of Criminal Justice, Correctional Institutions Division, proceeding *pro se*, brought the above-styled lawsuit. Plaintiff has submitted an application to proceed on an *in forma pauperis* basis.

The court referred this matter to the Honorable Zack Hawthorn, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court. The Magistrate Judge recommends the action be dismissed without prejudice based on 28 U.S.C. § 1915(g).

The court has received and considered the Report and Recommendation of United States Magistrate Judge filed pursuant to such referral, along with the record and pleadings. Plaintiff filed objections to the Magistrate Judge's Report and Recommendation. This requires a *de novo* review of the objections in relation to the pleadings and the applicable law. *See* FED. R. CIV. P. 72(b).


After careful consideration, the court concludes plaintiff's objections are without merit. Plaintiff complains he previously fell off his bunk and injured himself because he was not housed in accordance with his medical restrictions. Additionally, plaintiff alleges the defendants have impeded his access to the courts by not properly investigating his grievances and by not allowing him

to take a glass of water into the law library. Further, plaintiff alleges that during the years 2012 and 2013 he was assigned to a dormitory where there was black mold in the shower which plaintiff claims led to cancer developing in his nasal cavity. However, as the Magistrate Judge determined, plaintiff's allegations fail to show he was in imminent danger of serious physical injury at the time he filed his complaint. Therefore, because plaintiff has had at least four prior lawsuits or appeals dismissed as frivolous, malicious, or for failing to state a claim upon which relief may be granted, plaintiff is not allowed to proceed with this action on an *in forma pauperis* basis. See *Banos v. O'Guin*, 144 F.3d 883, 884 (5th Cir. 1998). Accordingly, the complaint should be dismissed without prejudice.

ORDER

Accordingly, plaintiff's objections are **OVERRULED**. The findings of fact and conclusions of law of the Magistrate Judge are correct and the report of the Magistrate Judge is **ADOPTED**. A final judgment will be entered in this case in accordance with the Magistrate Judge's recommendations.

SIGNED this the **21** day of **August, 2018**.


Thad Heartfield
United States District Judge